

PREFERRED COMMUNICATION SYSTEMS, INC.
PRESENTATION TO FCC IN WT DOCKET No. 02-55
November, 2003

I. The "Consensus Plan" Proposal ("Nextel Plan") Upsets a Level Playing Field.

A. The FCC Has Repeatedly Ruled, Since 1995, that the General Category Channels Are Commercial Channels, Particularly Intended for Cellular-Type Operations.

B. In both the Auctions and the Secondary Markets, Parties Have Acted Based upon that Playing Field: Parties Have Bid at Auctions, Parties Have Acquired or Retained Site-Specific Licenses, Parties Have Researched the Exact Footprint of Specific Incumbent Licenses (and the Resulting White Space Available) in Deciding upon Courses of Action.

II. The Nextel Plan Violates the US Constitution.

A. Nextel Is Offering to Trade the Bulk of the General Category in Return for the NPSPAC Spectrum, but Nextel Is Not the Licensee of the General Category Spectrum – It Is Trading Spectrum Owned by Others.

B. Public Safety Does Not Generally Support the Nextel Plan. Many of the Largest Public Safety Licensees Oppose the Nextel Plan. Many of Those Who Support It State That They Do So Because It Provides Public Safety with Free New Spectrum at 800 MHz.

C. 800 MHz General Category Spectrum Is Not White Space. Where Public Safety Takes an Asset Owned by a Private Person Involuntarily, It Must Do So by Eminent Domain, Not Confiscation. The Consensus Plan Proposes to Confiscate This Property without Compensation, in Violation of the US Constitution.

III. The Nextel Plan Is Arbitrary and Unfair "Retroactive Rulemaking."

A. An Agency's Power to Engage in Retroactive Rulemaking Is Limited. *See, e.g., Bowen v. HHS*, 488 U.S. 204 (1988), and Its Progeny.

B. The Nextel Plan Would Alter the Past Legal Consequences of Past Actions – It Would Fundamentally Change the Nature of the Spectrum that Preferred Purchased at Auction for Over \$31,000,000, and that Preferred Purchased on the Secondary Market as Well. It Would Reverse the Result of Auction No. 34, by Effectively Giving Nextel the Same Result as if Nextel Had Been the High Bidder.

C. The Nextel Plan Would Fundamentally Alter the Utility of Incumbents' Spectrum by Prohibiting the Uses Which Are Allowed Today.

IV. The Nextel Plan Is Also Arbitrary, Because It Causes Massive Nationwide Disruption to Fix a Localized Problem.

A. The Vast Majority of Public Safety 800 MHz Licensees Have Not Reported Harmful Interference.

B. The Vast Majority of Reported Incidents of Harmful Interference Have Been Cured without Resort to This “Solution.”

V. The Nextel Plan Is Arbitrary Because It Awards a Windfall to One Favored Private Party at the Expense of the Taxpayers and Competitors.

A. Section 309(j) of the Communications Act Does Not Permit the FCC to Award New Spectrum to Commercial Users Except via Auction.

B. Under the Plan, Nextel Would Be Receiving Both Virgin 800 MHz (formerly NPSPAC) Spectrum and also Virgin 1.9 GHz Spectrum without Having to Go through an Auction.

VI. If the Nextel Plan Is Adopted but Cannot Be Implemented, It Is Public Safety and non-Nextel Commercial Licensees That Will Suffer Disruption, and It Is the FCC That Will Be Blamed.

VII. The Nextel Plan’s Cost Estimates for Re-Locating Affected Licensees Have Virtually No Basis. They Are Based upon Estimates Multiplied by Arbitrary Assumptions

A. Nextel Never Explained How It Derived the Gross Number of Base Stations or Frequencies That Would Have to Be Changed

B. Although the Largest Part of Public Safety Relocation Would Involve So-Called “Very Large Systems,” Nextel Did Not Sample Any Such Systems

C. The State of Pennsylvania Says Its Relocation Costs Alone (a Single Licensee) Would Be Approximately \$100 Million, So Manifestly, \$850 Million Is Nowhere Near Reality for the Entire Country. (June 26, 2003 *Ex Parte* Filing, p.8; \$55M direct costs, and “the indirect cost to Pennsylvania for relocation may exceed the direct costs.”)

Summary of the PCSI's 800 MHz Frequencies Between 1-400 In Puerto Rico

		1 - 120		121 - 150		151 - 400		401-600		TOTAL	
		Site	EA	Site	EA	Site	EA	Site	EA	Site	EA
(1)	TOTAL	54	120	20	5	15	0	40	120	129	245
(2)	CLEAN	0	107	0	4	0	0	0	9	0	120
(3)	CONTIGUOUS	0	120	0	5	0	0	0	120	0	245

TOTAL NON-DUPLICATED FREQUENCIES	285
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Source of Data : ULS

Summary of the Nextel's 800 MHZ Frequencies Between 1-400 In Puerto Rico

	1 - 120		121 - 150		151 - 400		401-600		TOTAL	
	Site	EA	Site	EA	Site	EA	Site	EA	Site	EA
(1) TOTAL	0	0	0	25	64	80	80	60	144	165
(2) CLEAN	0	0	0	5	0	14	0	15	0	34
(3) CONTIGUOUS	0	0	0	25	4	8	4	60	8	85

TOTAL NON-DUPLICATED FREQUENCIES	212
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Source of Data : ULS

Summary of the Public Safety 800 MHz Frequencies Between 1-720 In Puerto Rico

		1 - 120	121 - 150	151 - 400	401-600	NPSPAC	TOTAL
(1)	TOTAL	0	0	37	0	6	43

NO REPORTED INSTANCES OF INTERFERENCE

Source of Data : ULS

SUMMARY OF PUBLIC SAFETY INTERFERENCE CASES

ALL CASES REPORTED TO NEXTEL FOR PAST 3 + YEARS

(CATEGORIZED BY # OF REPORTED "LOCATIONS" FOR EACH PUBLIC SAFETY SYSTEM)

# of PUBLIC SAFETY SYSTEMS- 800 MHz	1,580	100%
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# of Systems	% of Total
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(1)	Public Safety Systems that Reported: "NO CASES" of Interference	1,425	90%
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**TOTAL # of "LOCATIONS"
of Interference for
EACH CATEGORY**

# of Systems	% of Total
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# of Total Locations	% of Total
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(2)	Public Safety Systems that Reported: Location(s) of Interference at:				
	(a) One Location	82	6%	82	11%
	(b) Two or Three Locations	31	2%	71	9%
	(c) Four to Ten Locations	22	1%	148	20%
	(d) More than Ten Locations	20	1%	451	60%
	TOTAL REPORTING INTERFERENCE	155	10%	752	100%

Source of Data : Letters and Schedules (filed in this NPRM 02-55) by Nextel dated May 16, 2003 (page 4) and July 1, 2003 (Attachment B).

Summary of the "Status" of Interference Cases as Reported By Nextel

ALL CASES REPORTED TO NEXTEL FOR PAST 3 + YEARS

Descriptive Category	All "Reported" Cases		"Investigation Completed" Cases		"Complete Data" and "Investigation Completed" Cases	
	# of Cases	% of Total	# of Cases	% of Total	# of Cases	% of Total
(1) Interference HAS BEEN MITIGATED (using case-by-case "Best Practices")	415	55%	415	70%	415	100%
(2) Unable to Identify Cause of Problem (primarily due to incomplete data)	189	25%	189	30%	n/a	n/a
(3) Under Investigation	148	20%	n/a	n/a	n/a	n/a
TOTALS	752	100%	604	100%	415	100%

Source of Data : Letter and Schedules (filed in this NPRM 02-55) by Nextel dated July 1, 2003 (page 7 and "Attachment B").

n/a = "Not Applicable"

History of Nextel and Public Safety Co-Existence

NEXTEL SYSTEM STATISTICS

	# of Cell-Sites		# of Subscribers @ Year-End	Annual MOU's (minutes of use)
	@ Year-End	New Adds		
1997	4,000	n/a	1.3 million	3 Billion
1998	6,100	2,100	2.8 million	9 Billion
1999	9,086	2,986	4.6 million	18 Billion
2000	14,237	5,151	6.9 million	32 Billion
2001	18,288	4,051	9.2 million	55 Billion
2002	19,617	1,329	11.5 million	79 Billion
2003	est. 20,400	est. 800	13+ million	100+ Billion

PUBLIC SAFETY SYSTEM STATISTICS

	TOTAL		# of Cell-Sites	# of Radios	Reported Interference	
	# of Systems	# of Cell-Sites			# of Systems	# of Locations
1997	1,400	8,858	2.30 million	0	0	0
1998	1,428	9,039	2.35 million	0	0	0
1999	1,457	9,224	2.40 million	0	0	0
2000	1,487	9,412	2.45 million	13	56	56
2001	1,517	9,604	2.50 million	46	200	200
2002	1,548	9,800	2.55 million	74	330	330
2003	1,580	10,000	2.60 million	51	166	166

	# of Systems	# of Cell-Sites	# of Radios	Reported Interference	
				# of Systems	# of Locations
2003	1,580	10,000+	2.6 million	155	752

Source of Data :

- (1) Re: Nextel Systems -- Reflects combined data for Nextel Communications, Inc. (domestic operations) and Nextel Partners, Inc. obtained from SEC filings (Form 10-K) for years 1997 to 2002. 2003 are estimates from SEC Form 10-Q (6/30/03) and press releases, projected to year-end 2003.
- (2) Re: Public Safety Systems -- 2003 data was obtained from the "Supplemental Comments of the Consensus Parties" (Appendix A) filed in this NPRM on 12/24/02, and in a letter (filed in this NPRM 02-55) by Nextel dated May 16, 2003. Data for 2002 back to 1997, reflects an annual estimated adjustment of 2% calculated from the 2003 data.
- (3) Re: Reported Interference -- Letter and Schedules (filed in this NPRM 02-55) by Nextel dated July 1, 2003.

**LIST OF PUBLIC SAFETY ENTITIES SUPPORTING THE NEXTEL PLAN BECAUSE
IT WOULD GIVE THEM NEW "FREE" 800 MHz SPECTRUM**

Central Connecticut State University

Madison, Wisconsin

Leon County, Florida

Tallahassee, Florida

Orange County, Florida

Columbus, Ohio

Hamilton County, Ohio

Chesapeake, Virginia

Pickaway County, Ohio

Bay County, Florida

North Myrtle Beach, South Carolina

Woodridge, Illinois

Lee County, Florida

Sacramento, California

Provo, Utah

Fremont, California

Denver, Colorado